

~ RSA-1994-12761-1 ~

1258

OCT 20 1994

WINSTON & STRAWN

FREDERICK H. WINSTON (1853-1886)
SILAS H. STRAWN (1891-1946)

1400 L STREET, N.W.
WASHINGTON, D.C. 20005-3502

(202) 371-5700

FACSIMILE (202) 371-5950

WRITER'S DIRECT DIAL NUMBER

(202) 371-5869

184125

CHICAGO OFFICE
35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601
(312) 558-5800

NEW YORK OFFICE
175 WATER STREET
NEW YORK, NY 10038-4981
(212) 269-2500

GENEVA, SWITZERLAND OFFICE
43 RUE DU RHONE
1204 GENEVA, SWITZERLAND
(4122) 7810506

RIYADH, SAUDI ARABIA OFFICE
THE INTERNATIONAL LAW FIRM
SULAYMANIYAH CENTER
TAHLIA STREET
RIYADH 11495, SAUDI ARABIA
(9661) 4628866

October 19, 1994

Administrator
Research and Special Programs
Administration (DRP-1)
Department of Transportation
Washington, D.C. 20590-0001

Re: **Petition for rulemaking; discharge of steel Specification 57 portable tanks and intermediate bulk containers without removal from motor vehicles**

Dear Sir:

This petition for rulemaking is filed pursuant to the provisions of 49 CFR 106.31 on behalf of Nalco Chemical Company of Naperville, Illinois.

Petitioner. Nalco Chemical Company, One Nalco Center, Naperville, Illinois 60563-1198. Please address any questions concerning this petition directly to the undersigned at the Washington D.C. address and direct dial phone number indicated in the letterhead.

Regulation affected. 49 CFR 177.834(h), to the extent that this paragraph prohibits the discharge of contents from any container, other than a cargo tank, while the container remains aboard a motor vehicle.

Interest of petitioner. Nalco Chemical Company, a manufacturer and shipper of specialty chemicals, owns and operates a large fleet of stainless steel intermediate bulk containers (IBCs) and Specification 57 portable tanks. Many of these units are used in operations on rough terrain, such as in oil fields, where unloading of the units from vehicles to affect product discharge may increase risks to personnel during handling. Consequently, Nalco has an interest in revision of § 177.834(h) in such a manner as to minimize risks in product discharge operations by permitting discharge of these units while aboard motor vehicles, when appropriate.

Administrator, RSPA
October 19, 1994
Page 2

Amendments proposed. It is proposed that § 177.834 be amended as follows:

- 1) Revise the third sentence in paragraph (h) to read as follows:

"Except as provided in paragraph (k) of this section, discharge of contents of any container, other than a cargo tank, must not be made prior to removal from the motor vehicle."

- 2) Add a new paragraph (k) to read as follows:

"(k) *Unloading of intermediate bulk containers and Specification 57 portable tanks.* Notwithstanding the requirements of paragraph (h) of this section, steel intermediate bulk containers (31A) and steel Specification 57 portable tanks used to transport Class 3 (flammable and combustible liquids) or Class 8 (corrosive material) may be unloaded, ***but not refilled***, without being removed from a motor vehicle under the following conditions:

- (1) The intermediate bulk container or portable tank must be attended at all times during unloading by a qualified person. For the purposes of this requirement, "attended" and "qualified" have the same meanings described in paragraphs (i)(3) and (4), respectively, of this section;

- (2) Hoses may not be attached to the discharge outlets during transportation; and

- (3) Drivers must have been instructed as to necessary safeguards and proper procedure in the event of unusual delay, fire or accident."

Arguments in support of the requested action. Nalco currently holds an exemption, DOT-E 10429, that authorizes the discharge of certain flammable and corrosive liquids from stainless steel DOT Specification 57 portable tanks without removing the tanks from the vehicle on which they are transported. A copy of this exemption (second revision) is enclosed for information. The exemption was originally issued on an emergency basis on August 8, 1990. The justification for processing the exemption request on an emergency basis was that issuance of the exemption was in the public interest. On the basis of the public interest considerations relating to this exemption, and on the favorable experience gained in applying the exemption for over four years, Nalco is proposing the incorporation of the salient provisions of this exemption into the Hazardous Materials Regulations. Such action will eliminate the need for DOT-E 10429.

In addition to the stainless steel Specification 57 portable tanks currently permitted for discharge under DOT-E 10409, Nalco also requests that 31A steel intermediate bulk containers, the standards for which were recently promulgated with the publication of the Docket No. HM-181 final rule and which are, for all practical purposes, generally equivalent to steel

Administrator, RSPA
October 19, 1994
Page 3

Specification 57 portable tanks, be similarly permitted to be discharged without removal from a motor vehicle. Where in the following paragraphs reference is made to steel Specification 57 portable tanks or, simply, "portable tanks", such reference is intended to refer to 31A steel intermediate bulk containers as well as to steel Specification 57 portable tanks.

Paragraph 177.834(h) prohibits the discharge of the contents of any packaging, other than a cargo tank, prior to the removal of the packaging from the motor vehicle. In Nalco's exemption application submitted to DOT on July 30, 1990, rationale to support permitting the discharge of steel Specification 57 portable tanks from vehicles was presented. In that application it was noted that, in many cases, such units are required to be unloaded in remote areas without proper handling equipment, for example, in oil field operations. Often, the terrain on which the operations must be conducted is sandy, rocky or uneven, further contributing to handling difficulties and the associated risks. Compliance with the current regulations requires the portable tank to be removed from the vehicle, then lifted again and returned to the vehicle after the product has been discharged.

Each of these lifting operations poses a risk of dropping or otherwise damaging the unit, resulting in possible injury to handling personnel and exposure to the hazardous materials contents. Even under the best of conditions relating to terrain at the unloading location, discharging the portable tank with proper hosing and connections while it remains aboard the vehicle must inherently present reduced risks as compared to lifting the unit twice in order to discharge it from the ground immediately adjacent to the vehicle, as is required in order to comply with the current regulations.

It must also be noted that the nature of many of these unloading operations, and the quantities of hazardous materials involved, make the specification 57 portable tank the ideal packaging from the safety and environmental point of view. Quantities of hazardous material delivered to any location at, for example, an oil field operation, are typically between 55 and 110 gallons, with multiple locations (e.g., well sites) often supplied in a given field. At the same time, the total quantity of product delivered to all sites in a particular field will not normally exceed 400 gallons. As a result, use of cargo tanks is not a practical alternative. The use of drums or other non-bulk packagings on the other hand, would normally require multiple, on-site transfer operations resulting in potentially greater direct exposures to handling personnel and the need for removal and proper disposal of the empty packagings.

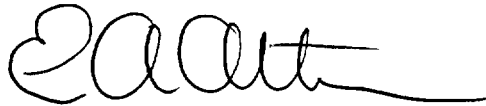
Conclusion. The prohibition from discharging a Specification 57 portable tank or steel IBC while it remains aboard a vehicle, as provided in §177.834(h), results in a situation in which the potential for incidents, damage and injury resulting from lifting the unit twice at each point of unloading is heightened. The potential for such incidents would be greatly reduced by amending § 177.834 as requested herein. RSPA accepted these same arguments in connection with Nalco's application for exemption and, to minimize the exposure of transport workers and the public to this increased level of risk, determined that it was in the public interest to issue DOT-E 10429. Since issuance of that exemption over four years ago, in excess of 3150 product transfers have been accomplished under the terms of the exemption, without incident. Against this background, Nalco hereby petitions that § 177.834(h) be amended to allow the discharge of certain hazardous materials from steel IBCs and Specification 57 portable tanks without

Administrator, RSPA
October 19, 1994
Page 4

removing the IBC or portable tank from a motor vehicle, subject to the conditions and limitations provided under the terms of DOT-E 10429.

Please do not hesitate to contact me if you have questions concerning this petition for rulemaking or if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. A. Altemos', with a long horizontal flourish extending to the right.

E. A. Altemos
Technical Advisor

Enclosure

cc: D. Deines, Nalco
W. Hastings, Nalco